

Fire Safety Act

BILL 4 2016 –
A review by Lorena Staples, QC

June 2016

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What is the official purpose of the Act? 1

What is new and different? 1

To whom or what does the Act apply? 3

What regulations, or code or other changes in fire safety standards are brought about by the Act? 4

Other Significant Definitions (Part 1, Section 1) 5

Fire Commissioner (Part 2, Sections 2 to 6) 7

Immunity from Legal Proceedings (Section 6)..... 8

Fire Hazards (Part 3, Section 7) 8

Fire Safety Inspections (Part 4, Sections 8 to 12) 9

Evacuations (Part 5, Sections 13 to 19)..... 10

Compliance Monitoring (Part 6, Sections 20 and 21) 10

Fire Investigation and Inquiries (Part 7, Sections 22 to 27)..... 11

Enforcement (Part 8, Sections 32 to 41) 11

Review Process (Part 9, Sections 42 to 44) 12

General (Part 10, Sections 45 to 49)..... 13

Transitional Provisions (Part 11, Sections 50 to 56) 13

Bill 4, enacted as the Fire Safety Act, S.B.C. 2016, Chap. 19, was given royal assent on May 19, 2016 but as of May 31, 2016, had not been proclaimed in force and none of the new regulations contemplated by the Act had been made.

The following is a summary of the differences between the regime under the current Fire Services Act and the Fire Safety Act enacted but not in force as of May 31, 2016.

What is the official purpose of the Act?

According to the February 15, 2016 news release issued by the Ministry of Transportation and Infrastructure and Emergency Management BC, the aim of the new Fire Safety Act (the Act), is to modernize fire safety regulations in BC. The Act will replace the Fire Services Act (FSA), which has not been substantially updated since 1979.

What is new and different?

- The owners of all premises must ensure that no fire hazard exists on or in their premises; this includes private dwellings, as well as public buildings.
- Municipalities must implement a *risk based compliance monitoring system for all public buildings (see definition in section 1) based on a risk analysis and consisting of fire safety inspections carried out by municipal fire inspectors and fire safety assessments conducted by the owners at their own cost in the form and manner required by the fire commissioner. This system tailors the type and frequency of inspections to the risk identified for each public building.
 - *A risk-based system to ensure compliance with regulations, typically consists of a making a risk assessment; formulating a plan to deal with the identified risks; implementing the plan; periodical or ongoing monitoring; reviewing the plan at regular intervals; and updating the plan when necessary as circumstances or external regulations change.
- Only municipal councils are designated as monitoring entities (by definition under section 1 of the Act); regional districts requested that they not be required to institute the compliance monitoring system mandated by the Act. Presumably, they could establish their own systems or none, as is the situation under the current FSA.
- Local Authorities may charge fees for fire inspections carried out under a compliance monitoring system, provided the fees are established by a bylaw and calculated according to the factors set out in the Act.
- Local assistants to the fire commissioner are replaced by fire inspectors appointed by local authorities (see definition in section 1), provided they meet the standards for qualifications and training established by the Fire Commissioner.
- The Act sets out in detail the powers of a fire inspector, including right of entry to inspect, obtaining warrants when the owner does not consent to entry, the scope of the inspection (measuring, testing, taking samples, requesting records and information, etc.), the right to be accompanied by expert assistance, and the extent of the orders a fire inspector may issue. The order may be filed in the Supreme Court and be enforced as an order of that court.

A fire inspector's order cannot set requirements that differ from the technical provisions or requirements under the applicable code. However, one of the requirements the inspector can make is for the owner to "alter the use or occupancy of the premises". This probably does not extend to evicting tenants who remove or disable smoke alarms but the new Act's other power to order repair of the premises may allow the order to include changing the alarm system to a building-wide system that cannot be easily destroyed or disabled. The prospect of the hefty administrative penalties and court ordered fines established in the Act might prove to be very persuasive.

- Under the FSA, local assistants could exercise some of the powers of the fire commissioner under the FSA; under the Act, the fire commissioner has the authority to exercise the powers of a fire inspector and a fire investigator.
- The province has been seeking consistency in all aspects of inspection functions performed in respect of regulatory schemes generally applicable throughout BC. These aspects include: standardized regulations in all parts of BC; consistent application of the regulations in administering and enforcing regulations; and standardizing the qualifications and training of inspectors. All of these are dealt with in the Act.

Section 48 (municipal bylaws) of the FSA has not been replicated in the Act and section 66 (fire chief powers) of the Community Charter will be repealed when the Act comes into force. Therefore, while municipal councils will be able to exercise their powers under section 8 of the Community Charter in relation to any matter within the scope of the Fire Services Act, they will not be able to give their fire chiefs any powers greater than chiefs can exercise under the new Act.

- Fire inspectors, fire investigators, fire chiefs and the fire commissioner have the legal status of a peace officer for the purposes of the Act. This clarifies the legal position of those persons when exercising "police powers", by conferring that authority in clear legislative terms, rather than having to convince a judge each time they appear in court that the Criminal Code provisions for peace officers or the common law cases apply to them.
- The local authorities will have the power to appoint fire investigators, as long as the person appointed, like fire inspectors, meet the fire commissioner's standards for qualifications and training. The powers of fire investigators are set out in detail in Part 7.
- An entire Part of the Act is devoted to evacuations – who has the authority to order them (tactical: fire chief or person authorized by the chief; preventive: municipal council / regional board or fire commissioner); under what circumstances; the process that must be followed; securing the premises; recovery of costs by municipalities, regional districts and fire commissioner.
- The Act establishes an administrative enforcement model (administered by the fire commissioner) to address some, but not all, noncompliance issues (failure to comply with fire inspector and preventive evacuation orders and contravention of inspection and investigation powers), touted as being more timely and effective compared to the court system, and subject to substantial maximum administrative penalties (individual \$25,000 and corporation \$50,000). If the Fire commissioner is willing to exercise this authority, it may be effective

to enable municipalities to persuade reluctant owners to upgrade their premises to code standards.

- The immunity provisions of the Act apply only to the fire commissioner and employees and persons delegated by the fire commissioner under section 6 of the Act. They do not apply to fire services personnel.
- The Fire Services Advisory Board will be dissolved, as there is no mention of it in the Act. It will no longer exist once section 56 of the Act (repealing the Fire Services Act) comes into force.

To whom or what does the Act apply?

The Act applies to

- the owners of all premises (defined in section 1) by a new requirement in Part 3 that they ensure no fire hazard exists on or in their premises.
- the office of the Fire Commissioner, as set out in Part 2 of the Act.
- local authorities, as defined in section 1 (more on this later).

The following pages contain a more detailed survey of the Fire Safety Act.

What regulations, or code or other changes in fire safety standards are brought about by the Act?

The Act itself does not contain any fire safety standards, but does give the Minister the authority to make regulations, including fire codes. While this is not entirely new, the scope of the minister's power to make regulations under the FSA is expanded under the Act. It also gives the Fire Commissioner the power to set certain standards, discussed later in this review.

Section 56 of the Act repeals the following current regulations, but this section would not be brought into force, i.e. actually repealed, until the new regulations come into force, a simultaneous procedure:

- (a) the Fire Services Act, R.S.B.C. 1996, c. 144;
- (b) the British Columbia Fire Code Regulation, B.C. Reg. 263/2012;
- (c) the Fire Services Fees Regulation, B.C. Reg. 123/94;
- (d) the Local Assistant Fee Regulation, B.C. Reg. 179/78.

In the meantime, the current regulations will stay in force.

New or revised regulations are presumably being written at this time, but that tends to be a lengthy process. For example, the Building Act was passed by the Legislature in February 2015 and parts of it were brought into force in September and December of 2015 but the regulations for the new regimes under that Act have yet to be made.

Section 1 of the Fire Safety Act contains the following definition that affects the regulations:

"BC fire code" means a fire code established by adopting the National Fire Code of Canada in accordance with section 48(3)(b) [regulations of minister].

The parenthetical reference to the "regulations of minister" means the minister's authority under section 48(3)(b) to do the following, which is an expansion of the minister's power under the FSA:

"(3) A regulation under this section may do any or all of the following:

...

- (b) adopt by reference, in whole or in part and with any changes the minister considers necessary, the National Fire Code of Canada, as the National Fire Code of Canada stands at a specific date or as it stands at the time of adoption;
- (c) adopt by reference, in whole or in part and with any changes the minister considers necessary, any regulation, code or standard on fire standards and fire safety, other than the National Fire Code of Canada,
 - (i) enacted as or under a law of another jurisdiction, including a foreign jurisdiction, or

- (ii) set by a provincial, national or international body or any other code- or standard-making body,

as the regulation, code or standard stands at a specific date or as it stands at the time of adoption;

..."

Presumably, any code that adopts the National Fire Code of Canada in whole or part in accordance with (b) in the above excerpt from section 48(3), would become the **BC fire code** as defined in section 1 (see above).

Other Significant Definitions (Part 1, Section 1)

Local Authorities

The Act, in particular the responsibility for conducting fire safety inspections mandated under Parts 4 and 6, applies to the following local authorities, as defined in section 1:

"local authority" means the following:

- (a) the council of a municipality;
- (b) the board of a regional district;*
- (c) any authority prescribed by regulation;

*UBCM took up the issue of mandated inspections with the ministry on behalf of regional districts and was informed in January 2016 that regional districts will not have responsibility for mandatory fire inspections, but municipalities will, as indicated by the following definition:

"monitoring entity" means the council of a municipality;

Fire Hazards

Not only is the word premises from section 7 [fire hazards] defined in section 1, but private dwelling and public building are defined separately because a more specific and onerous requirement, albeit still a prudent one, is imposed upon the owners of public buildings by section 20, as will be discussed later in this review.

"fire hazard" means a condition that exists on or in premises that endangers life or property due to fire, including a condition arising from the following:

- (a) the state of repair of the premises;
- (b) the use or occupancy of the premises;
- (c) the keeping of combustible, flammable, explosive or other hazardous materials or substances on or in the premises;

"premises" means any of the following:

- (a) a private dwelling;
- (b) a public building;

- (c) the parcel of land on which a private dwelling or public building is located;
- (d) a motor vehicle within the meaning of the Motor Vehicle Act, railway vehicle, aircraft, vessel or other means of transportation;

“private dwelling” means the following:

- (a) a structure that is occupied as a private residence;
- (b) if only part of a structure is occupied as a private residence, that part of the structure;
- (c) any other structure located on the parcel of land on which a private residence is located, except for a structure
 - (i) to which the public is ordinarily invited or permitted access, or
 - (ii) that is used for commercial, industrial or institutional purposes;

“public building” means the following:

- (a) a building other than a building that is a private dwelling;
- (b) a structure
 - (i) to which the public is ordinarily invited or permitted access, or
 - (ii) that is used for commercial, industrial or institutional purposes;
- (c) a facility, including a storage yard or tank farm.

Missing Definitions:

Some readers have noted the absence of definitions of *“fire department”* and *“firefighter”* in the new Act. However, firefighter is not mentioned in the Act; instead references are made to *“fire services personnel”*, defined as *“individuals employed or retained by or acting voluntarily for a fire department”*. Fire department is mentioned 8 times in the Act but not defined.

It could be that a definition of fire department is superfluous; it is commonly understood what a fire department is and does. Another reason may be that local authorities are not consistent in how they structure their services. Some may not have a stand alone fire department; some may include the fire service in a department of protective services. Perhaps that is why *fire department* is not defined in the new Act – to accommodate and capture the variations of organizational frameworks within local authorities.

This is not the only Act without these definitions. The *Fire Department Act* defines only *“fire chief”* and *“paid fire department”*. Neither the Workers Compensation Act nor the regulations under it, e.g. BC Reg. 125/2009 – Firefighters Occupational Disease Regulation, contain definitions of firefighter or fire department.

The new Act imposes certain duties and responsibilities for fire safety on local authorities (see definition below), not on fire departments. Fire departments of local authorities are not separate legal entities. The local authority may contract orally or in writing with a fire protection society to provide fire services for the local fire department, but that does not make the society the fire

department and liable for fire safety under the Act nor should the society want to have that legal exposure.

The Act empowers local authorities to designate fire inspectors to carry out fire safety inspections and fire investigators to conduct fire investigations without having to obtain the fire commissioner's approval. All that is required is that the designated persons meet the qualifications and training requirements.

Fire Commissioner (Part 2, Sections 2 to 6)

Position of Local Assistant is eliminated

There will no longer be local assistants to the Fire Commissioner (FC). Instead there will be fire inspectors and fire investigators. The standards that must be met in order to hold either of those positions will not be set out in regulations under the Act; they will be established by the FC. There is no provision for variations within those standards so they should be applicable province wide.

The FC also sets the standards for training of fire services personnel. This should fulfill the government's desire for consistency in the training of enforcement personnel, regulatory standards and enforcement methods throughout the province, in all regulatory matters within the jurisdiction of local governments.

Whereas under the prior legislation, a local assistant could exercise some of the powers of the FC, under the new Act, the FC may exercise the powers and duties of a fire inspector or fire investigator and, when acting in the capacity of a fire inspector under section 11, may make orders that differ from the technical requirements established by the BC fire code or another code.

This is a curious power that may result in a patchwork of variations by orders throughout the province, contrary to the province's desire for consistency. We can only hope that these different requirements will be documented and disseminated by bulletins or other means issued in a timely manner to all fire chiefs and other stakeholders.

The FC has the additional power to establish standards for any matters relating to the Act.

Another curiously worded power is found in Part 2, subsection 4(4):

"The fire commissioner must, if in the opinion of the fire commissioner it is necessary or desirable, give information, advice and recommendations to ... with respect to ..."

This appears to mean that the fire commissioner has complete discretion to have opinions about the matters listed under subsection 4(4) and to decide that it is necessary or desirable to give information and advice about them to the persons and entities mentioned. However, it does not say that the persons or entities have to pay attention to the information or abide by the advice.

There are no administrative penalties under Part 8, Division 2 for ignoring the advice of the fire commissioner nor is it an offence under section 36.

It is possible the fire commissioner could opine that a certain matter is an issue of public safety and hold an inquiry under Part 7, Division 2.

During debate in the Legislature on Bill 4 and section 4 particularly, the minister was asked “how the legislation allows consultation between a fire commissioner and fire departments”. Minister Yamamoto replied:

“There is no formal process in legislation that mandates that relationship or consultation between the fire chiefs and the office of the fire commissioner. But the ability to consult is available at any time. In fact, it is an open door process.”

The Minister also replied in the affirmative to the query whether “the minister expects that there will be consultation, that this section allows for consultation and that in terms of development of any regulations or policy that flow from this section, the minister would expect consultation to take place.”

The Minister also stated that the term “fire services personnel” used in section 4 “refers to anyone serving in the fire service. That’s whether they’re involved in fire suppression, fire prevention, fire inspection. It also includes any volunteer, career or professional fire service professional.”

Immunity from Legal Proceedings (Section 6)

The fire commissioner (FC) and any delegate of the FC under section 5 (delegated fire inspectors and fire investigators) are granted immunity under section 6 for anything done or omitted in the exercise of a power under the Act or in the performance of a duty in the Act, unless it was done or omitted in bad faith. However, the government will be vicariously liable for those persons’ actions or omissions. No such immunity is given to other entities, such as local governments or their fire personnel who are not delegated powers under section 5 of the Act.

Fire Hazards (Part 3, Section 7)

The owners of all premises must ensure no fire hazard exists on or in their premises

This responsibility is imposed on all owners of land or buildings and is what a prudent owner should do in any case. However, this general requirement did not exist in the FSA.

The most significant effect of the Act will be on the owners of premises defined as *public buildings*.

If the definition of fire hazard in section 1 of the Act (see page 2 of this review) is insufficient to determine if there is a fire hazard in some circumstances, the regulations may stipulate that the hazards are defined as in the current BC Fire Code.

That was the explanation given to the Legislature by the Minister. She said that the more specific description in the Fire Services Act predates the Fire Code. The intention is that the Act and the Fire Code would be read together.

I should point out that the courts do not always accept the intentions of the framers of bills. The rule is that legislation should be interpreted “on its face”, i.e. by the actual words and phrases used in the legislation and not by extraneous factors, such as intention. While lawyers may argue the intention by referring to the debates recorded in Hansard, when there is ambiguity in the actual language of the legislation, the court may apply its own interpretation of the language or strike the section down if the court finds that the language is ambiguous and lacks certainty.

Fire Safety Inspections (Part 4, Sections 8 to 12)

As already mentioned above, the office or position of local assistant will cease to exist and persons designated by council as fire inspectors will conduct fire safety inspections.

Under the Act, local authorities must designate persons or a class of persons as fire inspectors to conduct fire safety inspections. The individuals designated must meet the standards for a fire inspector established by the Fire Commissioner before being designated.

Under section 8(1), fire inspectors have to be designated *in writing* by a local authority; existing firefighters are not automatically fire inspectors under the Act. The local authority is the council of a municipality and the board of a regional district, and in writing for a council or board means by resolution. However, section 154 of the *Community Charter* and section 229 of the *Local Government Act* appear to allow them to delegate this authority to designate fire inspectors.

Existing inspectors and investigators will be grandfathered only to a certain extent. See subsection 53(1) in Part 11, a transitional section that provides a transitional or “grace” period for existing fire inspectors. Under subsection 53(2), the requirement in subsection 8(2) to designate fire inspectors applies only if existing inspectors meet the new standards established by the fire commissioner, and does not apply during the grace period, which is a minimum of one year unless extended by order in council of the provincial cabinet.

We do not know if annual competency or “ticket” training will be required for all inspectors and investigators. That is in the discretion of the Fire Commissioner who establishes standards for the training of fire services personnel under subsection 4(1)(d)(iii). There is no other mention of it in the Act. Sections 48 and 49 of the Act and section 41 of the *Interpretation Act*, referred to in sections 48 and 49, do not appear to contemplate that the minister or the cabinet will make regulations that usurp this mandated power of the Fire Commissioner to establish standards.

Despite the imperative to designate fire inspectors, local authorities and their fire services departments will welcome the new detailing in sections 9 and 10 of the Act of the prerequisite circumstances and procedures for carrying out inspections, the latter being consistent with the rules for entry into premises contained in the *Community Charter* and the *Local Government Act*.

Likewise, sections 10 and 11 set out in detail the power of the inspector to require the owner, occupier and employees to produce records and provide information relevant to the inspection and the power to issue orders to the owner.

Also new is the ability to file an order made under section 12 with the BC Supreme Court and to enforce it as if it were an order of that court.

Section 11 does not establish any time limits for compliance with orders under that section. There is no specific provision for short time limits in urgent circumstances, as in section 79 of the *Community Charter* (Remedial Action Requirements). The power to establish time limits seems to be broad and, if a time limit is reasonable in the circumstances, it should withstand scrutiny by the courts. Therefore, if a violation merits immediate or urgent action, a reasonable time for remediation would be commensurate with the exposure to public safety and the local authority's liability.

The Fire Chief's powers under section 66 of the *Community Charter* will be repealed when the new Act comes into force.

Evacuations (Part 5, Sections 13 to 19)

The power to order evacuations will no longer be the sole purview of the Fire Commissioner. Under this Part, the fire chief or a person authorized by the chief has the authority in respect to tactical evacuations where there is an immediate threat to life due to a fire hazard or explosion.

For preventive evacuations, where the local authority (municipal council or regional district board) or the fire commissioner believes that conditions exist on or in the premises that a fire in or on the premises would endanger life or the owner has failed to comply with a fire inspector's order under section 11, the local authority or the fire commissioner may evacuate the premises.

The procedures for securing evacuated premises and recovering the local authority's or FC's costs are clearly and thoroughly set out in sections 15 through 19.

As in all parts of this review, the devil is in the details. For accuracy, municipal officials and employees should read the applicable provisions of the Act and the regulations to all of the requirements are met.

Compliance Monitoring (Part 6, Sections 20 and 21)

The purpose of this system is to determine if an owner of a public building complies with the Act and regulations in respect of the building.

Gone is the mandatory duty under section 26 of the FSA for a municipality to provide for a regular system of inspection of hotels and public buildings. It is replaced by the duty of a municipal council, as a monitoring entity, to implement a risk-based compliance monitoring system for public buildings (see definitions).

The monitoring system must be based on a risk analysis for each public building that is conducted in accordance with the regulations under the Act. The regulations should be published when this Part comes into force. We should expect the regulations to define the elements of a risk analysis and how that differs, if at all, from a risk assessment of a specific building.

The monitoring entity may require an owner to provide a fire safety assessment that is conducted in the form and manner required by the fire commissioner and submitted to the monitoring entity within the time and manner required by the monitoring entity.

The Act is silent on whether the fire commissioner will establish qualification requirements for the persons who conduct fire safety assessments. Perhaps that will be contained in the regulations.

The monitoring system must include fire safety inspections carried out by a fire inspector delegated under section 5 of the Act, as well as fire safety assessments.

The monitoring entity may charge fees for fire safety inspections. The fees must be imposed by bylaw and set in accordance with the rules in section 20(4), similar to the rules for fees under section 194 of the *Community Charter*. If the monitoring entity has requested the owner of

a public building to provide a fire safety assessment, and it is not submitted within the time specified, the monitoring entity may conduct a fire safety inspection.

Fire Investigation and Inquiries (Part 7, Sections 22 to 27)

Duty to report fire (section 22)

In the circumstances set out in section 22, an owner must report fires to a fire department or the fire commissioner. In turn, the latter must report the fire to the local authority.

The circumstances are where a fire has destroyed or damaged property or resulted in injury or death and the fire department does not attend. There may be an issue with the meaning of “damaged” where insignificant fires occur or the cost to repair the damage is very minor.

Fire Investigations

The designation, powers and duties of fire investigators are set out in sections 23 to 26.

Suspicious fires must be immediately reported by a fire investigator to the police.

Inquiries

The powers and procedures for the fire commissioner to hold inquiries, including obtaining orders from the Supreme Court and contempt proceedings for uncooperative persons are set out in sections 28 to 31.

Enforcement (Part 8, Sections 32 to 41)

Warrants to enter (section 32)

Warrants may be obtained by application to a judge or judicial justice of the Provincial Court for entry if the owner denies entry or there are reasonable grounds to believe the owner will deny entry. Telewarrants are available if it would be impracticable to appear personally to apply.

Administrative Penalties (Sections 33 to 35)

Under section 33, the fire commissioner has the power to impose administrative penalties for the failure to comply with

- a fire inspector’s order under section 11
- a preventive evacuation order by a local authority of the fire commissioner under section 14
- failure to produce records or provide information requested by a fire inspector under section 10(6) or a fire investigator under section 26(5)

The administrative penalties are not more than \$25,000 for an individual and \$50,000 for a corporation.

The factors the FC must consider in setting the penalty include previous enforcement actions against the offender and presumably the monetary penalty imposed for those previous actions. The Lieutenant Governor in Council may establish separate administrative penalties for the failure to produce records or information.

Local authorities are not permitted to impose administrative penalties, despite the powers they have under the *Community Charter, Local Government Act* or *Vancouver Charter*.

The penalties are imposed by serving a notice on the person, who may request a review by the FC under section 43. Payment is due within 30 days after the notice is served or the date the FC's decision is served on the person, whichever is later.

The penalty is considered a debt due to the government and may be recovered as such. If not paid, the FC may file a certificate with the Provincial Court, which has the same force and effect of a judgment of that court.

Offences (Sections 36 to 41)

Section 36 sets out a number of offences, which may be prosecuted, with maximum fines of \$50,000 for an individual and \$250,000 for a corporation.

The following are the offences:

- (a) obstructs, hinders or interferes with a fire safety inspection, fire investigation or evacuation under this Act;
- (b) provides false or misleading information when required to provide information under this Act;
- (c) fails to comply with an order made under section 11 [*fire inspector orders*] or 14 [*preventive evacuations*];
- (d) fails to report a fire in accordance with section 22 [*duty to report fire*];
- (e) fails to comply with a remedial order made under section 41 [*remedial orders*].

The maximum fines are: individual \$25,000 or imprisonment for 1 year or both, and corporation \$250,000.

If the offence continues for more than 1 day, separate fines, each not exceeding the maximum fine for the offence, may be imposed for each day the offence continues.

If a corporation commits an offence under the Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence also commits the offence, whether or not the corporation is convicted of the offence.

Review Process (Part 9, Sections 42 to 44)

Although it is not so stated in this Part, a decision of the Fire Commissioner on a review is subject to judicial review under the Judicial Review Procedure Act but otherwise is final.

A person served with a fire inspector's order under section 11 or a preventive evacuation order under section 14 or a notice imposing an administrative penalty under section 33 may, within 10 days of receipt of any such "decision", request the FC to review the decision.

Persons who participated in the original decision must not review it. The FC has the power to establish the rules of practice and procedure in relation to reviews.

A decision is not stayed while it is under review; it remains in effect.

General (Part 10, Sections 45 to 49)

Notice and Service (section 45)

This section sets out the manner of giving or serving notice or other documents under the Act.

Strata Lots (section 46)

An order affecting strata lots may be served on the strata corporation in accordance with section 63 of the Strata Property Act if it cannot be served on the owner after reasonable efforts, but only if certain circumstances apply.

Peace Officer (section 47)

Fire inspectors, fire investigators, fire chiefs and the FC have the legal status of a peace officer for the purposes of the Act.

Regulations of Minister (section 48) and Regulations of Lieutenant Governor in Council (section 49)

The specific and general powers are numerous. Checking for regulations is advised as they may be in force and affect the provisions of the Act that are relevant to any situation listed in these sections.

Transitional Provisions (Part 11, Sections 50 to 56)

These provisions govern whether and for how long the former *Fire Services Act* and regulations remain in effect and under what circumstances. They also concern the effect on orders made under the previous legislation and the transition period for local assistants to remain in office.

The end.